4. The FCC has fiddled with our formal complaint for six years and has not resolved the issue of EUCL charges. They have ordered miniscule compensation for Dial-Around service and a cumbersome process by which we are to collect a pittance on our service.

5. The $0.25 per Dial-Around call, that you claim AT&T will pay us for pirated traffic is equivalent to only about an 8% commission on a $3.00 phone call that AT&T has stolen from us in the first place. We should receive $1.00 minimum per call and $0.25 per access attempt! In Wisconsin we are allowed to charge up to the local call rate (i.e. $0.35) per credit card call in coin at the phone for other carriers calling card calls. We, in good faith, have not done so - yet! If we make it expensive for the carriers we will keep the traffic.

6. AT&T pays much higher commissions directly to customers that PIC AT&T (i.e. truck stops, aggregators, etc.). $0.25 per call is an insult equivalent to no compensation. AT&T's track record on payment of their share of the $6.00 previous compensation affords us little confidence that this new arrangement will be honored.

7. Of much importance is the issue of all 1-800 calls. 1-800-calls in general provide revenue for the LEC and the carrier and leave us to financially wilt away while tieing up our equipment so revenue producing calls can't be made.

8. On top of this "insult" and "threat" to our survival I see that the FCC now wants us to begin paying them fees because we "benefit" from their decisions. We have not benefited by the previous lopsided FCC decisions, we have been victimized by those decisions. Regardless of your public relations image to the contrary, APCC has not successfully dealt with this problem - yet!

9. If we don't pay our monthly phone bill we get our service terminated. AT&T et. al. has not paid their bill, thus we should in unison terminate them by selective blocking.

10. Al, we have got to get real. I'm about ready to block on any denied ANIs and I believe that the APCC should organize a nationwide protest block to focus attention on the real issues. If I block alone I may force FCC or marketplace reprisal - If we block in unison, for one day nationwide we will draw attention to our plight and I forecast that we will win with the support of the end users.

11. Please let's get a real program put together and press the real issues with the FCC - if we don't you won't have our industry as a client - we simply will be a thing of the past.

Respectfully,

Terrence S. Fox

Terrence S. Fox
Chairman, CEO

TSF:kmc

attachments: copy of letter to Bob Aldrich
potential notice to our accounts

cc: Vince Sandusky, APCC
Marty Segal, PCC
Ralph Ehlinger, Corporate Attorney

Communications Division of
**Cochran, Fox & Co. INC.**
200 W. Cecil St., P.O. Box 807, Neenah, WI 54957-0807
(414) 727-1313 – Fax (414) 727-1311

January 26, 1995

Attorney Robert F. Aldrich
Keck, Mahin & Cate
Attorneys at Law
1201 New York Avenue NW
Penthouse Suite
Washington, DC 20005-3919

Dear Bob,

Per our telecon of 1-25-95 I am concerned that AT&T has us all believing that they can and will track the calls that are completed after 1-800 and 10288 access to their system. That they will pay us $.25 per completed call on the same schedule as we now get paid (but not without a fight) the $6.00 per station per month.

I doubt if they are now tracking our phones in the three states we serve. If they are please tell me how they are and give me some evidence of their success. How are they to know if I put additonal phones on line? Are they going to:

a) know they are on line?
b) know they are mine?
c) add them to their tracking?
d) confirm their tracking works and is working?

You may think I'm overly concerned. I don't think so. I've gotten in two deals with AT&T and they have botched up both of them largely because of their corporate bungling, general incompetence and the functional morass they endure.

Thus far we haven't collected, even close, the $6.00 per month we are due on the lines we have under the current system. Unreasonable challenges are made to the credibility of our lines existing (i.e. our ANIs are disputed) and unreasonable demands for LEC letters are made. Why isn't a copy of a LEC bill more than sufficient to settle a questioned or disputed ANI?

With all the trouble we have in collecting any part of the $6.00 on existing lines where we have to provide bills and LEC letter confirmation that the payphones even exist, why should we expect that AT&T will - quietly, quickly, efficiently, accurately, honestly and by themselves poll our ANIs and send us big money.

The current system is poor and I believe that without a lot of effort on your part we'll wait until July to find we're screwed and it's too late to fix the 1st quarter. Second quarter will also be gone and it will be too late to fix it and we'll be half-way through the third quarter before we know we've been had again. Lord only knows when we'll get proper payment.

Please, show me I'm wrong.

Respectfully,

Terrence S. Fox

Terrence S. Fox
Chairman, CEO

TSF:kmc

cc: Al Kramer, Keck, Mahin & Cate
Marty Segal, Public Communications Consulting
Vince Sandusky, APCC
Kay Cochran, Cochran, Fox & Co., Inc.
Sam Nail, Cochran, Fox & Co., Inc.

# DRAFT

Dear ,

In order to attract more calls from AT&T, MCI, Sprint, etc., we plan to dramatically lower credit card and coin paid long distance rates in the near future.

Coin calls will be $.25 a minute. anywhere in the USA. Credit card calls will be equal to or less than AT&T, anywhere in the USA.

If any phone company customer does not pay their monthly phone bill, the phone company disconnects their service. The FCC has ordered that we allow our telephone users to access any carrier (i.e. MCI, Sprint, AT&T, etc.). Further, they have ordered that the carrier pay us for this access. Not all carriers have paid their phone bill to us. Therefore, we will block any carrier that does not pay us the FCC ordered tariffed quarterly phone bill that is required.

This will cause some user complaint but we are lowering our rates to guarantee that no customer will be financially inconvienced. We will clearly label our phones so that confusion is minimized and that the customer understands the reason for disconnection of their chosen carrier is that their carrier has not paid their phone bill.

If you or a phone customer has any questions we may be reached by dialing 611 on the payphone or 1-800-777-4292 daily.

Respectfully,

T.S. Fox

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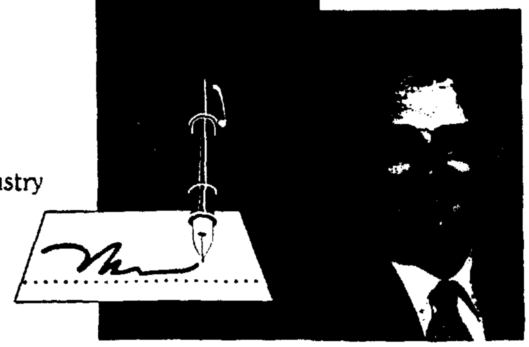
APCC


# The Real Story About Rate Caps



The public communications industry is facing another great challenge. Rate caps on interstate operator services are being considered by the Federal Communications Commission (FCC).

From a regulator's perspective, a ceiling on charges for operator-assisted calls may be needed to protect the public from "unjust and unreasonable" rates. The FCC has cited charges from certain operator service providers (OSPs) that greatly exceed the commission's "informal" rate ceilings which evolved under the Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA). Some charges are over $15 for eight-minute calls.

There's no doubt that such high rates are a significant issue. But is applying rate caps the ultimate solution?

Truth is, rate caps wouldn't have to be considered if a truly competitive market existed. Instead, independent public payphone (IPP) providers must compete in a market with high telephone bills dictated by local exchange company (LEC) tariffs. Local call pricing has remained at 25 cents for nearly 20 years in many markets, while the effects of inflation have continued to eat away at margins. From transmission to validation to billing and collection, IPPs and OSPs also have significantly higher costs associated with providing the same operator services to the public.

IPPs also receive no payment for 800 subscriber calls which, on average, account for over half the calls at our payphones. The latest inequity is the LECs' rapid deployment of "smart phones." Despite using the same technology as IPPs, LEC payphone equipment remains unbundled with the network, while our payphones are considered customer premise equipment (CPE).

Given such blatant examples, it is difficult to understand why these inequities are not better appreciated by the regulatory bodies who govern our operations. We have tirelessly detailed the facts before the public service commissions, and some limited progress has been made. Yet, with all the many inequities remaining, we are now faced with rate caps on the federal level.

Implementation of a rate cap would set a universal and enforceable ceiling on all 0- and 0+ interstate calls. Accepting a reasonable rate cap may help defeat billed party preference. On the other hand, some industry participants charge that the larger IPPs are supporting rate caps only to force the smaller IPPs out of business or to force them to sell (nothing is further from the truth). One could also argue that the application of rate caps is "price fixing." The criticisms can be endless.

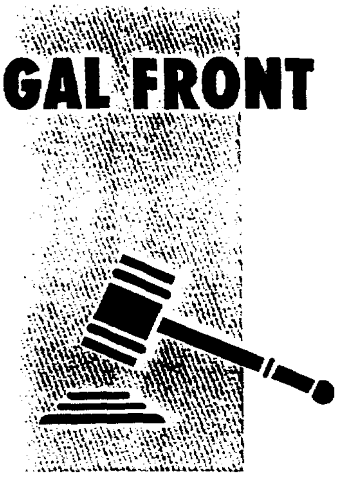
The bottom line is, rate caps would not even be an issue if the market were truly competitive. In a perfect world, the marketplace should force rates downward, and IPPs have always wanted to effectively compete while charging at or below dominant carrier rates. But such effective competition will never be possible on the existing unlevel playing field.

Reasonable rate caps may not be the ultimate answer to this dilemma on the federal level. However, rate caps may have to be another sacrifice by the IPP industry before the many inequities at the core of the problem are meaningfully addressed by the FCC.

Terry L. Colbert

Terry L. Colbert
APCC Chairman

*Just prior to press time, APCC's board of directors approved a rate cap proposal. Please see "Newsflash" for details.*



# APCC to Justice Department: *Don't let Bell companies remonopolize interLATA payphone market*

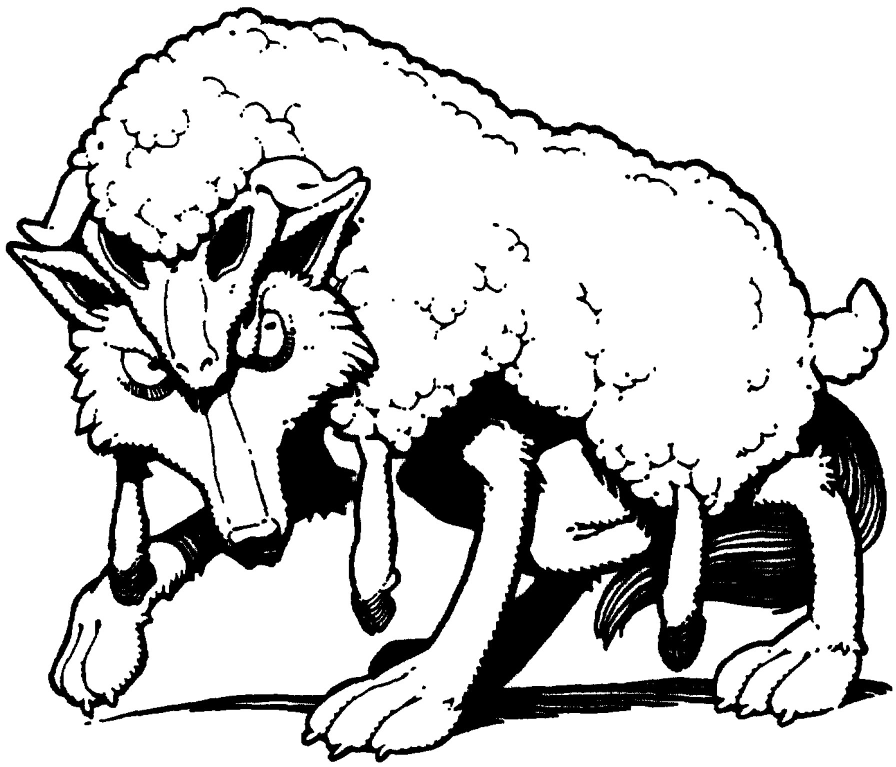
BY ALBERT H. KRAMER AND ROBERT F. ALDRICH

In comments submitted to the Department of Justice on November 16, the American Public Communications Council (APCC) urged the department to maintain the existing line-of-business restrictions of the AT&T divestiture consent decree (the "Modification of Final Judgment," or MFJ). APCC specifically opposed any entry of Bell operating companies (BOCs) into the market for interLATA telecommunications services offered at payphones. APCC's Comments responded to a motion filed by four Bell companies — Bell Atlantic, BellSouth, NYNEX, and Southwestern Bell — requesting total elimination of the MFJ and all its line-of-business restrictions. If the motion is granted, the Bell companies would be allowed, for the first time since 1984, to provide interLATA services, including interLATA payphone services.

To summarize APCC's position, the payphone industry today continues to be dominated by the Bell companies because of basic structural inequities which have never been seriously addressed by federal or state regulators. Full and fair competition cannot exist in this important telecommunications market as long as the BOCs and their competitors are not playing by the same ground rules. If the Bell companies were allowed to provide interLATA services under current conditions, the Bell companies would use their monopoly control of local networks and dominance of the payphone market to take over the interLATA payphone services market in their respective regions. APCC's position is discussed in detail below.

## *Competition Obstructed*

While the BOCs' motion described the payphone marketplace as a "healthy, competitive market," the fact is that competition in the payphone market has been greatly obstructed by fundamental structural inequities, grossly anti-competitive Bell practices and an outmoded



*"Virtually none of the regulatory safeguards applicable to other competitive Bell company offerings apply to payphones."*

regulatory regime. Statistics cited by the BOCs indicate that they have retained some 85 percent – a monopoly share – of the installed payphone base in their respective territories.

The BOCs remain dominant because their payphone service continues to be totally integrated with their local service monopolies. Virtually none of the regulatory safeguards applicable to other competitive Bell company offerings apply to payphones. In other competitive markets, the threat of Bell company dominance has been addressed by structural remedies such as divestiture (long distance, telecommunications equipment) or separate subsidiary requirements (cellular telephone service). In the case of payphones, the major structural problems have not been addressed at all. Indeed, even limited "nonstructural" remedies. such as "equal access" requirements or accounting safeguards to make payphone operations a separate "profit center" from other monopoly services have not been employed. For regulatory purposes. Bell company payphone service is treated no differently from other monopoly services.

There is another critical distinction between the history of the emergence of competition in other areas of telecommunications and in public payphone service. In other sectors, such as customer equipment and long distance, the new competition faced a Bell service that was supposed to be priced to make a *contribution* to other regulatory services. In other words, the Bell company was expected to price these services above its cost and to use the excess revenue to help hold down the price of other services, such as residential service. The monopoly service being subjected to competition was not supposed to be *supported* by other monopoly services, but was supposed to support them. The new competition could underprice the Bell monopoly because the service in question was classified as a "contributing" service.

In the payphone area, by contrast, regulators have historically believed that BOC payphones should be affirmatively subsidized or supported by other regulated revenues. Thus, unlike other sectors, the BOC payphone operations are virtually expected to incur losses. and they can do so without any impact on overall profitability. Meanwhile, the BOCs price the monopoly services used by IPP providers at rates that make it extremely difficult to compete. Indeed, these services are priced at levels that make IPP providers "contribute" to the LEC payphone operations.

Thus, it is not surprising that only a limited amount of payphone competition has emerged. While this limited competition has yielded some substantial benefits, including increased availability of payphones and a greater variety of services offered to the public, in a more equitable competitive environment, these benefits could be far more fully realized.

APCC submitted with its comments some 600 pages of documents showing the kinds of practices the Bell companies have used to maintain their dominance of the payphone market. Among the practices documented by APCC are:

1 *The BOCs have refused to provide essential network support services to independent public payphone (IPP) providers on reasonable terms.*

The BOCs' payphone equipment is fully supported by the network, including the provision of answer supervision, call rating and coin control. By contrast, independent payphones generally are connected to the network on what is essentially a standard business line.

Even in the few places where a coin line offering is now available, the terms of the offerings are generally unsuitable for use by IPP providers. Since existing coin line offerings allow only one rate for sent-paid calls, IPP providers must sacrifice the ability to set their own rates and make a profit in order to obtain the desirable features of a coin line service. Further, "coin lines" do not require the caller to prepay overtime charges, allowing callers to simply "walk away" without depositing additional coins.

In addition, coin line service includes features that IPP providers do not need. Needed services, such as answer supervision, if available at all, have been excessively priced. For example, BellSouth finally offered unbundled answer supervision, after years of litigation, but priced the service at a staggering 219 percent above cost.

ABC 2 *Independent payphone providers and BOC payphones are not charged equivalent rates for equivalent network services.*

The BOCs generally do not even purport to "impute" to their payphone operations tariffed charges for access by their payphones to the local exchange network. For example, BellSouth charges an IPP $3 to $4 per month for blocking and screening services, which are necessary to prevent fraud, even though the services actually only cost approximately 50 cents per month. Equivalent charges are not applied to the BOC payphones. Very few state regulatory commissions have taken any steps to address this inequity, and none has ordered the remedy that would ensure meaningful imputation — the creation of a fully separate subsidiary.

DEF 3 *BOC payphone costs are inextricably commingled with local exchange network costs, greatly facilitating cost shifting.*

All costs associated with the BOC payphone operations are built into the regulated revenue requirement. Thus, there is no effective way for regulators to determine whether an appropriate amount of investment and expense has been allocated to payphone operations.

GHI 4 *The BOCs pay substantial "commission" payments to premises owners for traffic generated at BOC payphones, but offer little or no compensation to IPP providers for the traffic generated for the BOCs at independent payphones.*

This inequity is most blatant in the many jurisdictions where IPP providers still are not allowed to handle 0+ intraLATA calls themselves. The BOCs are guaranteed the traffic and generally refuse to pay any commissions to IPP providers while paying ample commissions to location owners where their own payphones are installed.

JKL 5 *IPP providers pay for basic network fraud protection services, while BOC payphones are protected without charge, and are insulated by tariff provisions from incurring any fraud liability.*

The BOCs' payphones are connected to their respective networks' operator services system, which is programmed to prevent completion of calls unless the central office detects the proper amount of coins or a valid billing number. IPP coin detection and coin control functions must be placed within the payphone where they are more vulnerable to fraud. IPP providers were forced to litigate for years to obtain basic blocking and screening fraud protection services. Even today, these services are less effective than the fraud protection available to BOC payphones.

Moreover, IPPs remain vulnerable to "clip-on" and "secondary dial tone" fraud. When the BOCs' installers leave service lines or jacks exposed, the phone is subject to clip-on fraud. IPP providers in the New York region have requested NYNEX to program its switches to be able to receive "tone-code activated dialing" sequences from IPP lines, which would effectively prevent clip-on fraud, but NYNEX has refused to offer this service.

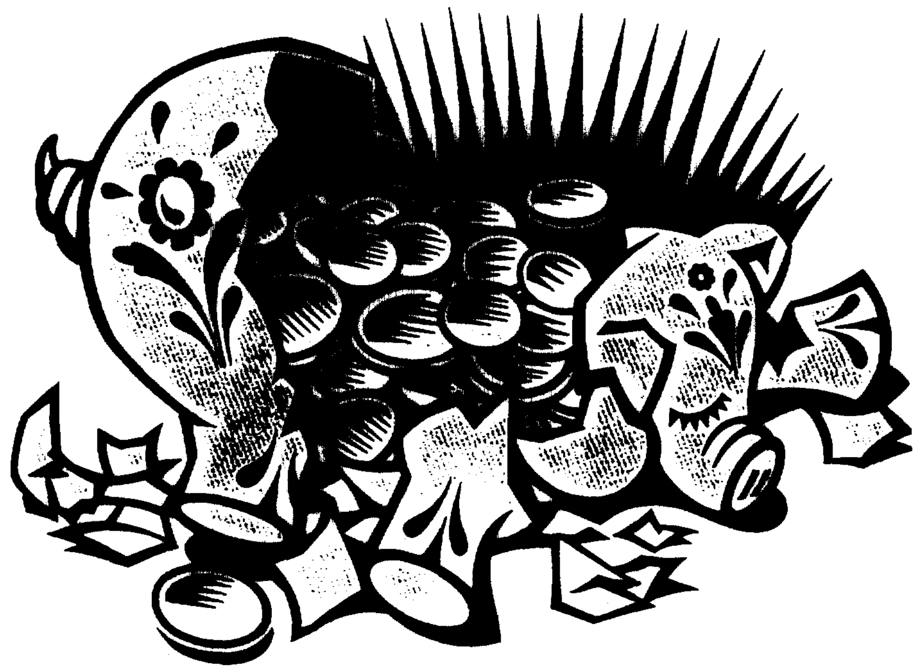
On several occasions, the BOCs have altered or changed the signals that IPPs rely on to detect when a call has ended. This leaves the payphone vulnerable to secondary dial tone fraud.

MNO 6 *The BOCs' inside wiring practices impose burdens on IPP providers.*

IPP providers are required to purchase and install their own wire from the "demarcation point," generally the "entry block" to the premises where the phone is located. In the case of the BOCs' payphones, all wire up to and including the payphone is provided as part of the BOC's integrated regulated payphone service. Further, the BOC often installs the demarcation point in a place that is not sufficiently secure, creating a threat of fraud. To install a secure demarcation point, it is necessary to carefully coordinate the installation activities of BOC and IPP provider personnel — increasing the likelihood of missed appointments and other examples of inadequate service that have been a pattern in BOC relationships with IPP providers.

PRS 7 *Numerous abuses have been reported in BOC marketing, billing and the provision of essential monopoly services.*

The BOCs' dual role as monopoly supplier of essential services *and* competitor to IPP providers gives them an incentive to place additional obstacles in front of IPP providers. Because of the absence of any effective regulation at the state or federal level, the BOCs also have



the ability to impose such obstructions on IPP providers without incurring any significant penalty. For example:

- Because the BOCs' network services divisions and payphone divisions share common management, the BOCs' payphone personnel have access to information regarding service orders or related contacts by IPP providers, and often use that information to contact the new customer to solicit their business.
- IPP providers report that when they request service from BOCs, it has been routine for BOCs to miss appointments, have inflexible scheduling, and to refuse to sell in-place pedestals and equipment to IPP providers.
- The BOCs apply complex and archaic billing practices that result in increased staffing costs for IPP providers. For years, BellSouth provided paper bills (one for each payphone) which lacked call detail sufficient to track the accuracy of the bill or conduct a meaningful audit.
- IPP providers frequently report that the BOC personnel disparage them *and* intimidate or harass customers who choose to use an IPP provider.
- BOCs frequently install their own phones directly in front of or next to existing IPPs, even though the Bell payphone cannot meet the company's own standards of profitability. The obvious purpose is to "discipline" the IPP provider by cutting revenue from its payphones.

At the heart of all these imbalances and discriminatory practices are the anti-competitive incentives created by the integration of the BOCs' competitive payphone operations with their monopoly local exchange telephone enterprise. *Full and fair competition cannot exist in this important telecommunications market as long as the BOCs and their competitors are not playing by the same ground rules.* Yet, federal and state regulators have made virtually no serious effort to address the structural problems that prevent effective competition.

Meanwhile, IPPs are subject to most of the same consumer protection regulations that apply to BOC payphones, including requirements to allow coin free access to 911 or emergency services, offer free access to refund and repair services, and meet all standards for handicapped accessibility. In addition, IPPs must comply with state and federal posting requirements and ensure access to all locally available interexchange carriers. Finally, rates for local and often for intraLATA and interLATA calls at independent public payphones are subject to strict rate ceilings in the majority of states. While IPP providers believe regulation of local calling rates may be appropriate, capped rates are used by the BOCs to intensify the "price squeeze" in which IPP providers are caught: the rates for interconnection and access services approach the maximum rates the IPP provider can charge the consumer for the call.

## *A Return to Dominance*

To grant the Bell companies' Motion to Vacate the Decree under current conditions would cause the anti-competitive conditions in the payphone market to be replicated in the market for interLATA payphone services. Each BOC thoroughly dominates the installed base of payphones in their service areas. If allowed to provide interLATA services, the Bell companies could and would use their monopoly power and their dominance in the payphone market to destroy or greatly impede competition for interLATA payphone services. In the payphone industry, within each BOC's region, the reintegration of the old Bell system would be virtually complete. ■

*Al Kramer is the general counsel for APCC. He and Bob Aldrich are partners in the Washington, D.C.-based firm of Keck, Mahin and Cate, which specializes in telecommunications law.*

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